

115TH CONGRESS
1ST SESSION

H. R. 901

To place restrictions on the use of solitary confinement for juveniles in
Federal custody.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2017

Mr. CUMMINGS (for himself, Mrs. LOVE, Mr. CONYERS, Ms. JACKSON LEE, Mr. SEAN PATRICK MALONEY of New York, Ms. BASS, and Mr. LABRADOR) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To place restrictions on the use of solitary confinement for
juveniles in Federal custody.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Maintaining dignity
5 and Eliminating unnecessary Restrictive Confinement of
6 Youths Act of 2017” or the “MERCY Act”.

1 **SEC. 2. JUVENILE SOLITARY CONFINEMENT.**

2 (a) IN GENERAL.—Chapter 403 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 5043. Juvenile solitary confinement**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the term ‘covered juvenile’ means—

8 “(A) a juvenile who—

9 “(i) is being proceeded against under
10 this chapter for an alleged act of juvenile
11 delinquency; or

12 “(ii) has been adjudicated delinquent
13 under this chapter; or

14 “(B) a juvenile who is being proceeded
15 against as an adult in a district court of the
16 United States for an alleged criminal offense;

17 “(2) the term ‘juvenile facility’ means any facil-
18 ity where covered juveniles are—

19 “(A) committed pursuant to an adjudica-
20 tion of delinquency under this chapter; or

21 “(B) detained prior to disposition or con-
22 viction; and

23 “(3) the term ‘room confinement’ means the in-
24 voluntary placement of a covered juvenile alone in a
25 cell, room, or other area for any reason.

1 “(b) PROHIBITION ON ROOM CONFINEMENT IN JU-
2 VENILE FACILITIES.—

3 “(1) IN GENERAL.—The use of room confine-
4 ment at a juvenile facility for discipline, punishment,
5 retaliation, or any reason other than as a temporary
6 response to a covered juvenile’s behavior that poses
7 a serious and immediate risk of physical harm to
8 any individual, including the covered juvenile, is pro-
9 hibited.

10 “(2) JUVENILES POSING RISK OF HARM.—

11 “(A) REQUIREMENT TO USE LEAST RE-
12 STRICTIVE TECHNIQUES.—

13 “(i) IN GENERAL.—Before a staff
14 member of a juvenile facility places a cov-
15 ered juvenile in room confinement, the
16 staff member shall attempt to use less re-
17 strictive techniques, including—

18 “(I) talking with the covered ju-
19 venile in an attempt to de-escalate the
20 situation; and

21 “(II) permitting a qualified men-
22 tal health professional, or a staff
23 member who has received training in
24 de-escalation techniques and trauma-

1 informed care, to talk to the covered
2 juvenile.

3 “(ii) EXPLANATION.—If, after at-
4 tempting to use less restrictive techniques
5 as required under clause (i), a staff mem-
6 ber of a juvenile facility decides to place a
7 covered juvenile in room confinement, the
8 staff member shall first—

9 “(I) explain to the covered juve-
10 nile the reasons for the room confine-
11 ment; and

12 “(II) inform the covered juvenile
13 that release from room confinement
14 will occur—

15 “(aa) immediately when the
16 covered juvenile regains self-con-
17 trol, as described in subpara-
18 graph (B)(i); or

19 “(bb) not later than after
20 the expiration of the time period
21 described in subclause (I) or (II)
22 of subparagraph (B)(ii), as appli-
23 cable.

24 “(B) MAXIMUM PERIOD OF CONFINE-
25 MENT.—If a covered juvenile is placed in room

1 confinement because the covered juvenile poses
2 a serious and immediate risk of physical harm
3 to himself or herself, or to others, the covered
4 juvenile shall be released—

5 “(i) immediately when the covered ju-
6 venile has sufficiently gained control so as
7 to no longer engage in behavior that
8 threatens serious and immediate risk of
9 physical harm to himself or herself, or to
10 others; or

11 “(ii) if a covered juvenile does not suf-
12 ficiently gain control as described in clause
13 (i), not later than—

14 “(I) 3 hours after being placed in
15 room confinement, in the case of a
16 covered juvenile who poses a serious
17 and immediate risk of physical harm
18 to others; or

19 “(II) 30 minutes after being
20 placed in room confinement, in the
21 case of a covered juvenile who poses a
22 serious and immediate risk of physical
23 harm only to himself or herself.

24 “(C) RISK OF HARM AFTER MAXIMUM PE-
25 RIOD OF CONFINEMENT.—If, after the applica-

1 ble maximum period of confinement under sub-
2 clause (I) or (II) of subparagraph (B)(ii) has
3 expired, a covered juvenile continues to pose a
4 serious and immediate risk of physical harm de-
5 scribed in that subclause—

6 “(i) the covered juvenile shall be
7 transferred immediately to another juvenile
8 facility or internal location where services
9 can be provided to the covered juvenile
10 without relying on room confinement; or

11 “(ii) if a qualified mental health pro-
12 fessional believes the level of crisis service
13 needed is not currently available, a staff
14 member of the juvenile facility shall imme-
15 diately transport the juvenile to—

16 “(I) an emergency medical facil-
17 ity; or

18 “(II) an equivalent location that
19 can meet the needs of the covered ju-
20 venile.

21 “(D) ACTION BEFORE EXPIRATION OF
22 TIME LIMIT.—Nothing in subparagraph (C)
23 shall be construed to prohibit an action de-
24 scribed in clause (i) or (ii) of that subparagraph
25 from being taken before the applicable max-

1 imum period of confinement under subclause (I)
2 or (II) of subparagraph (B)(ii) has expired.

3 “(E) CONDITIONS.—A room used for room
4 confinement for a juvenile shall—

5 “(i) have not less than 80 square feet
6 of floor space;

7 “(ii) have adequate lighting, heating
8 or cooling (as applicable), and ventilation
9 for the comfort of the juvenile;

10 “(iii) be suicide-resistant and protru-
11 sion-free; and

12 “(iv) have access to clean potable
13 water, toilet facilities, and hygiene sup-
14 plies.

15 “(F) NOTICE.—

16 “(i) USE OF ROOM CONFINEMENT.—
17 Not later than 1 business day after the
18 date on which a juvenile facility places a
19 covered juvenile in room confinement, the
20 juvenile facility shall provide notice to the
21 attorney of record for the juvenile.

22 “(ii) TRANSFER.—Not later than 24
23 hours after a covered juvenile is trans-
24 ferred from a juvenile facility to another

1 location, the juvenile facility shall provide
2 notice to—

3 “(I) the attorney of record for
4 the juvenile; and

5 “(II) an authorized parent or
6 guardian of the juvenile.

7 “(G) SPIRIT AND PURPOSE.—The use of
8 consecutive periods of room confinement to
9 evade the spirit and purpose of this subsection
10 shall be prohibited.

11 “(c) STUDY AND REPORT.—Not later than 2 years
12 after the date of enactment of this section, and each year
13 thereafter, the Attorney General shall submit to Congress
14 a report that—

15 “(1) contains a detailed description of the type
16 of physical force, restraints, and room confinement
17 used at juvenile facilities;

18 “(2) describes the number of instances in which
19 physical force, restraints, or room confinement are
20 used at juvenile facilities, disaggregated by race, eth-
21 nicity, and gender; and

22 “(3) contains a detailed description of steps
23 taken, in each instance in which room confinement
24 is used at a juvenile facility, to address and remedy
25 the underlying issue that led to behavioral interven-

1 tion resulting in the use of room confinement, in-
2 cluding any positive or negative outcomes.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of sections for chapter 403 of title 18, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

“5043. Juvenile solitary confinement.”.

○